

REMARKS

Original claims 1-16 were filed in the U.S. National Phase Application, and claims 17-20 were added in a preliminary amendment. In response to a Restriction Requirement, claims 1-11 and 17-19 were elected for prosecution. In response to the outstanding Office Action, claims 1-11 and 17-19 have been amended, and claims 12-16 and 20 have been canceled. Accordingly, claims 1-11 and 17-19 are pending and at issue.

Note to the Examiner

Claim 20 was originally grouped with a non-elected group of method claims, but was listed in the outstanding Office Action as being part of the elected group of apparatus claims. Regardless of the inconsistent, applicant has responded to the outstanding Office Action as if claim 20 was in fact withdrawn, and was not considered in the outstanding Office Action.

Response to the Drawing Objections

The drawings have been objected to under 37 C.F.R. § 1.83(a). Applicant has amended Figure 2 to include "the separator 16," as is described in the specification at paragraph 0018. Accordingly, no new matter is added by the drawing amendment. The drawing amendment is reflected in the enclosed "Replacement Sheet" for Figure 2.

Applicant respectfully disagrees with the Office Action that other features of the invention specified in the claims are not shown in the drawings. 37 C.F.R. § 1.83(a) permits a labeled representation to be used when a detailed drawing is not essential for a proper understanding of the invention. As seen in Figure 1 and amended Figure 2, all of the elements specified in the claims are at least illustrated as labeled representation. For example, claim 1, the only independent claim, recites a vacuum filler (3), a casing (4), a clip module (1), a motor (9), and a clip(2). As seen in Figure 1, all of these elements are shown as labeled representations. Additional drawing detail is not necessary, as additional detail is not essential for a proper understanding of the invention. Specifically, additional detail is not essential to understand that the motor of the vacuum filler drives the vacuum filler and the clip module. Accordingly, applicant respectfully requests withdrawal of the drawing objection.

Response to the Specification Objection

The specification is objected to for failing to provide a proper antecedent basis for the "control circuit" of claim 19. Claim 19 has been amended to recite the "control unit."

Applicant respectfully asserts that this objection is now moot.

Response to the § 112 Rejections

Claims 2-8, 10, 11 and 17-19 are rejected under 35 U.S.C. § 112, ¶ 1 for failing to comply with the enablement requirement. Specifically, the Office Action states that "the claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains ... to make/or use the invention."

Applicant respectfully disagrees.

The standard for determining whether the specification meets the enablement requirement is whether one skilled in the art can make/or use the invention without undue experimentation. M.P.E.P. § 2164.01 (citing *In re Wands*, 858 F.2d 731, 737 (Fed. Cir. 1988)). Additionally, a patent need not teach, and preferably omits, what is well known in the art. M.P.E.P. § 2164.01 (citing *In re Buchner*, 929 F.2d 660, 661 (Fed. Cir. 1991) (emphasis added)). All of the claims at issue meet this standard.

For example, claim 2 was rejected because "the clip module having a *part* which is rotatably driven and by means of which the clip module can be driven is not shown in any way, nor is there sufficient discussion in the specification to understand how such a feature operates." Figure 1, however, shows the rotatable part (5) adjacent the clip module (1) which is driven by the shaft (6). Similarly, the specification states "the rotatable part 8 has arranged thereon a shaft 6 which is, in turn, connected to rotatable part 5 of the clip module 1. By means of said rotatable part 5 of the clip module 1, at least some of the various components of the clip module can be driven mechanically." (Paragraph [0019]) Additionally, "[t]he shaft 6 is adapted to be connected to part 8 or part 5, positively or non-positively, by suitable couplings, such as claw couplings or the like...". (Paragraph [0024])

One of skill in the art would be well versed in mechanical connections that could be used in coupling the vacuum filler to the clip module and, as such, it would not require one of skill in the art undue experimentation to make/or use the invention. Furthermore, to add any

more discussion on what a "part" is, or to what it means by "rotatably driven," would only teach that which is well known in the art and is preferably omitted.

For the reasons above, claims 2-8, 10, 11 and 17-19 are similarly enabled.
Accordingly, applicant respectfully requests withdrawal of the § 112 rejections.

Response to the § 102(b) Rejections

The Office Action rejects claims 1 and 9 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,044,426 ("Kupcikevicius"). Under M.P.E.P. § 2131,

[t]o anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

Citing, Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Kupcikevicius does not teach or disclose a stuffing apparatus having a vacuum filler and a clip module driven by a motor of the vacuum filler. Specifically, Kupcikevicius discloses pneumatic cylinders 142, 148, 142' and 148' that drive the clip closing devices. Therefore the Kupcikevicius clip module is not driven by the vacuum filler but by a pneumatic control circuit. Nonetheless, claim 1 has been amended to clearly indicate the driving means for the clip module. The basis for this amendment can be found on in paragraph [0006].

Accordingly, applicant respectfully requests withdrawal of the § 102 rejections.

CONCLUSION

In view of the above discussion, applicant submits that each of the presently pending claims is in immediate condition for allowance. Accordingly, the examiner is respectfully requested to pass this application to issue. It is believed that no fees are necessary in connection with the present Amendment. However, in the event that any fees are due, kindly charge the cost thereof to our Deposit Account No. 13-2855.

Respectfully submitted,

MARSHALL, GERSTEIN, & BORUN LLP
6300 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6357
(312) 474-6300

July 20, 2005

By:



Matthias Abrell
Reg. No.: 47,377
Attorney for Applicant